

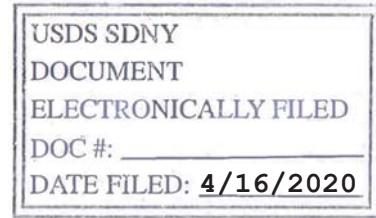
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

FRANKLIN NUNEZ,

Defendant.



No. 13-cr-167 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

By letter dated March 25, 2020 (attached hereto), and received by the Court on April 6, 2020, Defendant Franklin Nunez moved for release from incarceration in light of the COVID-19 pandemic (“Nunez Ltr.”). Though the letter is not styled as such, the Court has interpreted Nunez’s request as one for compassionate release under the First Step Act of 2018, 18 U.S.C. § 3582(c)(1)(A). The government opposes Nunez’s motion. (Doc. No. 72 (“Gov’t Ltr.”).) Because Nunez has not yet exhausted his administrative remedies, his request is DENIED without prejudice.

On August 9, 2013, Nunez pleaded guilty to conspiring to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 846. (Doc. No. 9.) The Court sentenced Nunez to 42 months’ imprisonment on February 28, 2014, significantly below his Guidelines range of 70 to 87 months. (Doc. 16.) In addition, the Court imposed a three-year term of supervised release. (*Id.*)

Nunez completed his term of incarceration in February 2016, and his term of supervised release commenced. Less than six months later, Nunez was arrested for driving under the influence after colliding with two vehicles. (Doc. No. 21; Gov’t Ltr. at 1.) At a revocation hearing, the Court imposed new terms on Nunez, but did not revoke his supervised release. (Doc. No. 43.)

Nevertheless, in November 2017, Nunez was again arrested for driving under the influence. (Doc. No. 41.) After Nunez admitted to violating the conditions of his release, the Court again imposed additional terms on Nunez and adjourned his sentencing 90 days. (Doc. No. 24.) Nunez’s sentencing was adjourned several more times over the following year. During that time, Nunez was arrested yet again, this time for driving without a license and driving without installation of an ignition interlock device. (Doc. No. 57 at 6.)

On December 20, 2018, the Court revoked Nunez’s supervised release and imposed a sentence of 24 months’ incarceration. (Doc. No. 52.) Nunez is currently held at the Metropolitan Correctional Center (“MCC”), in Manhattan, and is expected to be released on July 31, 2020. (Gov’t Ltr. at 2.)

Nunez requests that the Court “give [him] the opportunity to be home with [his] family due to . . . the [COVID-19 pandemic], since [it] is taking a lot of lives.” (Nunez Ltr. at 1.) The government opposes Nunes request, noting that “he has failed to exhaust his administrative remedies” and that it “would be legal error for the Court to disregard that requirement.” (Gov’t Ltr. at 1, 4.) According to the government, Nunez did not submit a letter to the warden of the MCC seeking compassionate release until April 3, 2020. (*Id.* at 1.)

The Court recently examined the issues that Nunez’s request for compassionate release raises in detail in *United States v. Ogarro*, No. 18-cr-373 (RJS) (S.D.N.Y. Apr. 14, 2020), ECF No. 666. Specifically, the Court determined that “section 3582(c)’s exhaustion proscription” unambiguously “mandates that where the [Bureau of Prisons] has not submitted an application for a sentence reduction, a court cannot, under any circumstances, grant compassionate release unless the defendant has either ‘fully exhausted all administrative rights to appeal’ or waited at least 30 days from the receipt of such a request by the warned of the defendant’s facility.”” *Id.* at 6 (quoting

18 U.S.C. § 3582(c)(1)(A)). The Court further concluded that it lacked the authority to waive that exhaustion requirement. *Id.* at 7–10. Accordingly, because Nunez has failed to exhaust his available administrative remedies, his request for compassionate release is DENIED without prejudice.

SO ORDERED.

Dated: April 16, 2020
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

3/25/20

Dear and Honorable Judge Sullivan,

The reason for this letter is to ask you if you can one more time give me the opportunity to be home with my family, due to this terrible situation of the Corona Virus, since this is taking a lot of lives.

I respectfully ask you for another chance even if it is on house arrest or how ever you consider, so i could be with my love ones.

Thank you for your time in reading this letter and i also hope and wish the best to you and your family.

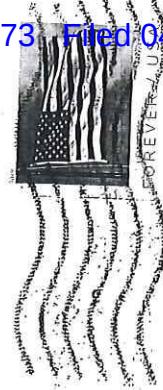
Respectfully

Franklin Núñez
68111-054

my Projected
Release date is

07/31/20





NEW YORK NY 100
2020 MAR 26 2
26 MAR 2020 PM 2020

Metropolitan Correction Center
Franklin Núñez - 6811-054
150 Park Row - 11 South
New York NY 10007

500 Pearl St
2 New York NY 10007
Attn. Honorable Sullivan
and/or Clerk of Court

Express
Delivery